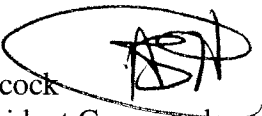




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
SAM NUNN
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA GEORGIA 30303-8960

MEMORANDUM

From: Shane Hitchcock 
Regional Incident Commander

To: A. Stanley Meiburg
Acting Regional Administrator

Walter Dipietro
Region 4 Safety Officer

Date: July 15, 2010

Subj: Acquisition of Special Clothing under EPA Order 4800.1 A1 for field personnel involved in beach clean-up and related activities relating the Deepwater Horizon Oil Spill in affected Region 4 states

This Memorandum seeks your approval for the acquisition of Special Clothing under EPA Order 4800.1 A1 for EPA personnel involved in beach clean-up, oil spill removal and related activities in response to the Deepwater Horizon Oil Spill in affected Region 4 states.

Background: On April 20, 2010, the Deepwater Horizon Oil rig exploded in the Gulf of Mexico resulting in the leaking of thousands of barrels of oil each day into the Gulf of Mexico. Besides the impact to marine life and water quality, the oil spill has impacted over 50 miles of coastline in Region 4 and has the potential to impact several hundred additional miles of beaches and coastal areas. EPA Region 4 has been tasked by the United States Coast Guard, Federal On-Scene Coordinator (FOSC), to oversee beach clean-up and oil removal activities in Alabama, Florida and Mississippi as well as other related activities (sampling, public outreach, etc.). EPA staff assigned to work on beach clean-up or oil spill removal are required to work outdoors for up 10-12 hours per day, seven days a week for a two-week rotation and, after four weeks of their normal assigned duties, work another two-week rotation on beach clean-up/oil spill removal.

On June 8, 2010, the Unified Area Command for the Deepwater Horizon Response issued a Heat Stress Safety Alert and a Heat Stress Management Plan.¹ Heat stress and heat exhaustion has been the primary cause of health and safety incidents in the response. The daily high temperatures in July and August in Pensacola, Florida, and similar coastal areas in Alabama and Mississippi, averages between 89 and 91 degrees. EPA staff working on beach clean-up and oil spill removal are required to work outdoors 10-12 hours per day for fourteen consecutive days in areas without shade or access to air conditioning. According to the attached Incident Report for the Mobile, Alabama sector, approximately 40 incidents of heat related stress were reported for the four day of period between June 19 – June 22, 2010, among all responders (BP, Coast Guard, EPA and private contractors). Because of the extreme heat conditions faced by the responders involved in beach clean-up and oil removal, the EPA Incident Commanders in the Mobile, Alabama, sector, approved the use of light-weight nylon pants with removable leggings below the knee or light-weight nylon shorts for EPA personnel involved in beach clean-up and oil spill removal and the use of wide-brim, light-weight hats by field personnel whose duties involve prolonged exposure to the sun and extreme heat conditions in the Health and Safety Plan (HASP) approved by the Incident Commander. The approved clothing is rated as SPF 50 (to provide UV protection), are quick drying and do not retain moisture.

A key concern here is that the clothes worn by the responders reduce the possibility of heat stress as much as possible, thus the Special Clothing needs to have the attributes described above. Typical warm weather clothing such as canvas or cotton/polyester mix clothing will not provide the extra protection from heat stress and will not shed moisture as quickly as light-weight nylon clothing that is specially designed for hot-weather use. This type of light-weight, nylon clothing, is typically available only at specialty outfitters geared towards providing clothing to anglers, sportsmen and others who spend significant periods outdoors in extremely hot and humid conditions. Thus, it is appropriate to consider wide-brimmed, light weight hats, light-weight nylon pants with removable leggings and shorts as Special Clothing pursuant to EPA Order 4800.1 A1.²

Only employees who are mobilized to work under the EPA Region 4 Incident Command as Federal On-Scene Coordinator Representatives (FOSCR) or Superfund Clean-Up and Assessment Team (SCAT) members will be authorized to purchase the light-weight nylon pants with removable leggings or light-weight nylon shorts. The pants can only be purchased by employees assigned to the SCAT team or as FOSCRs in two locations from

¹ The Deepwater Horizon Heat Stress Safety Alert, Heat Stress Management Plan and OSHA Bulletin on Keeping Workers Safe During Oil Spill Response and Cleanup Operations, as well as other OSHA Bulletins and fact sheets are attached to this Memorandum.

² Similarly, the Incident Commander has also required that all EPA personnel who are required to wear insignia shirts to switch to white, light grey or beige logo shirts when conducting field activities as the dark blue and green shirts added to the heat stress because the darker colors failed to reflect the sunlight and increased the likelihood of heat stress. Because of the extreme heat conditions, the Incident Command seeks your approval for the acquisition of special clothing pursuant to EPA Order 4800.1 A1, the light-weight pants and shorts described above, and wide-brim, light-weight hats with bandana-flaps to provide additional protection from the sun and reduce the risk of heat stress for EPA employees whose duties involve working outdoors in extreme heat conditions.

the GSA Supply Schedule near the Mobile Incident Command (Daphne, Alabama and Destin, Florida).³ No other EPA employees, contractors or other personnel are authorized to purchase the pants or shorts. These employees are required to work on the beaches and other coastal areas for 10-12 hours per day, seven days a week for two week rotations. There is little or no shade in these areas and transport vehicles that are being utilized for beach clean-up do not have air-conditioned cabs or any protection from the sun.

Finally, unlike routine EPA acquisitions, the purchase of Special Clothing here is funded with CWA § 311 cost recovery funds. The source of funds and the application of the EPA Orders on Providing Wearing Apparel and OSHA Clothing are explained below.

Clean Water Act § 311. Unlike routine procurement actions, the Deepwater Horizon Oil Spill is also a cost-recovery action under Clean Water Act § 311 where the costs incurred by EPA and the Coast Guard will be recovered from the Responsible Party. All federal response costs are being charged to Pollution Removal Funding Agreement (PRFA) agreements from the U.S Coast Guard for subsequent cost recovery or the Responsible Party is directly paying costs that would normally first be incurred by the federal responders and then charged to the Responsible Party. For example, the Responsible Party is paying for Vessels of Opportunity to provide marine transport for EPA and NOAA scientists and engineers to take water samples from the Gulf and the Responsible Party is also purchasing utility vehicles for the federal personnel overseeing beach clean-up to use while the oversee the clean-up work on the beach. Normally, this would be considered an improper augmentation of the U.S. Coast Guard's (or EPA's) budget, but since CWA § 311(b)(10) makes the removal costs of the oil spill response cost-recoverable, EPA is charging the costs for the Special Clothing to a PRFA between EPA and the Coast Guard. As the Federal On-Scene Coordinator (FOSC), the Coast Guard has assigned EPA to beach clean-up operations, waste management and water, air and waste stream sampling and monitoring duties. The Federal On-Scene Coordinator's Representative (FOSCR) has, as described above, determined that Special Clothing is necessary for the EPA personnel assigned to beach clean-up operations to safely perform their jobs. The costs for the Special Clothing is not being charged to EPA appropriated funds; instead, as described above, the costs for the Special Clothing is being charged to the Responsible Party through a PRFA with the Coast Guard.⁴

³ The light-weight, wide-brimmed hats have been bought in bulk for distribution to personnel assigned to work on beach clean-up and oil removal. Because pants and shorts have to fit individual, responders are required to buy those directly under their deployment orders.

⁴ Although EPA Region 4 is following applicable federal law and established EPA policy on acquiring protective clothing, CWA § 311 provides that the FOSC, when responding to a discharge of oil from on offshore facility of such size or character as to be a substantial threat to the public health or welfare of the United States (including but not limited to fish, shellfish, wildlife, other natural resources, and the public and private beaches and shorelines of the United States), the FOSC shall direct all Federal, State, and private actions to remove the discharge or to mitigate or prevent the threat of the discharge and, in carrying out this charge, may "act without regard to any other provision of law governing contracting procedures or employment of personnel by the Federal Government." CWA § 311(c)(2)(A) and (B)(i). Here, EPA Region 4 is responding to an oil spill of unprecedented size and scope under an assignment from the FOSC to lead the beach clean-up and land-based oil removal operations. This assignment requires EPA employees to work in hazardous conditions for prolonged periods that could result in exposure to extreme

EPA Order on Providing Wearing Apparel to Employees: EPA's policy (EPA Order 4800.1 A1) for providing wearing apparel for employees addresses three types of wearing apparel: uniforms, "special clothing," and clothing with identifying insignia. The Agency addresses a fourth type of apparel, "protective clothing," under the Occupational Safety and Health Act (OSHA) in EPA Order 1440.1 and EPA's Safety, Health and Environmental Management Program Guide. The apparel in question does not fall under the uniform or clothing with identifying insignia categories and thus those categories will not be discussed.

Special Clothing. Federal employees are generally required to report to work wearing appropriate clothing for their jobs. However, one of the statutory exceptions to this general requirement is 5 U.S.C. § 7903 which states, "[a]ppropriations available for the procurement of supplies and material or equipment are available for the purchase and maintenance of special clothing and equipment for the protection of personnel in the performance of their assigned tasks." In B-193014, January 9, 1979, the Comptroller General found that "special clothing" must meet all three of the following requirements:

1. the item must be "special" and not the type of clothing that an employee would reasonably be expected to provide for himself;
2. the item must be for the Government's benefit in that the employee must need the clothing to perform the work safely and successfully, and the clothing cannot be solely to protect the employee; and
3. the employee using the special clothing must be engaged in hazardous duty.

The Comptroller General has agreed that the following items are allowable "special clothing" in appropriate circumstances: snowmobile suits, helmets, and mittens for personnel required to operate snowmobiles over rough and remote forest terrain; and down-filled parkas for personnel who normally work in warmer climates but are temporarily assigned to perform outdoor activities in extremely cold winter conditions. These temporary duty employees would not be expected to own clothing for extreme environments, and the Comptroller General reasoned that without this clothing they could not physically perform their duties without endangering their health. 63 Comp. Gen 245 (1984).

The test for Special Clothing is met here. First, because of the unprecedented size and scope of the Deepwater Horizon Oil Spill, Region 4 is filling the SCAT and FOSCR ranks with employees from other Regions with much cooler climates and with employees that are not typically assigned to field work. The Deepwater Horizon Oil Spill has

conditions where heat stress and heat exhaustion are very real possibilities. Under CWA § 311(c)(2)(B), EPA Region 4 could have arguably acquired the protective clothing described above without following the requirements of established EPA policy or the federal statutes described below.

resulted in an unprecedented contamination of beach, coastal, marsh and tidal areas that will require EPA employees to work 10-12 hour shifts, seven days a week for two-week rotations while exposed to extreme heat conditions. Even experienced Region 4 OSCs have not been previously exposed to such long-term exposure to extreme heat conditions. As explained above, these types of light-weight nylon pants and shorts are typically available only at specialty outdoor outfitters and are designed for a niche market of anglers, sportsmen and others who spend significant periods in hot, humid areas exposed to the sun in extreme weather conditions. Thus, it is not reasonable to expect employees to provide the requisite sufficient quantity of light-weight nylon pants with removable leggings or shorts with UV protection and clothing necessary to reduce the possibility of heat exposure for two-week rotations of seven days a week of 10-12 hour shifts for the remainder of the summer.

Second, the conditions on the Gulf Coast during the summer months constitute extreme heat conditions for engaging in prolonged physical activity and exposure to the sun. Daily high temperatures for Pensacola, Florida and the Gulf Coast areas of Alabama and Mississippi average 90 degrees throughout the summer. FOSCR's and SCAT members are required to work outdoors for 10-12 hours a day, seven days a week, for two-week periods while on foot or on beach transport vehicles without protection from the sun and heat. During a four day period in June, before the hottest period of the summer began, the Mobile Sector Incident Command reported over 40 instances of heat exhaustion, heat stress or heat related incidents. Third, and finally, based on the facts described above, the Incident Command has determined that employees working as SCAT members of FOSCRs are working in hazardous conditions that could result in illness or injury if measures to protect the employees from heat stress and heat exhaustion are not taken.

OSHA Protective Clothing. Under the Occupational Safety and Health Act (OSHA) (29 U.S.C. § 668), each agency must have an effective and comprehensive occupational safety and health program which must "acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees." Additionally, Section 19 of OSHA requires the head of an executive agency or department, or an official designated by him or her, to determine items necessary under OSHA and its implementing regulations. The Comptroller General has interpreted OSHA to allow the Government to furnish swamp boots to work in a jungle environment or ski boots for the Forest Service snow rangers. B-187507, December 23, 1976 and 57 Comp. Gen. 379 (1978). The Comptroller General also held that the purchase of steel-toe safety shoes for a supply clerk whose work included movement of heavy objects was authorized under Section 19 of OSHA, if the agency determined that the footwear is determined necessary for safety reasons to protect the clerk from the possibility of foot injury. 67 Comp. Gen. 104 (1987).

Here, the light-weight pants with removable leggings and light-weight, wide-brimmed hats may also satisfy the standards under OSHA for personal protective clothing and equipment. EPA Order 1440.1, May 11, 1998, states that it is the EPA policy for its Senior Managers to provide safe and healthful working conditions for EPA employees. Here, the Incident Command has issued a HASP directing employees working as SCAT

members or as FOSCRs to wear clothing described above to reduce the possibility of heat stress and heat exhaustion. Since the protective hats and light-weight pants were reasonably determined to be necessary for employee safety, the Incident Command believes that these items can also be acquired under EPA Order 1440.1 A1.

Conclusion: EPA beach clean-up and oil removals responders working the Deepwater Horizon Oil Spill are exposed to extreme hot weather conditions with average daily high temperatures over 90 degrees and prolonged exposure to the elements (7 days a week for two week rotations for 10-12 hours a day). Over a four day period in June (before the hottest part of the summer) the Mobile Sector recorded over 40 incidents of heat stress and heat exhaustion among all responders working the clean-up. Beach clean-up and oil removal is projected to continue for the next several months through the hottest part of the summer. As a result the Incident Commander, working with the Safety and Health Officer, determined that minimizing heat stress was a significant concern. Thus the Incident Commander concluded that requiring the use of light-weight nylon pants and shorts, and wide-brimmed, lightweight hats was appropriate to those employees required to work outdoors for prolonged periods. Only the staff required to work in extreme conditions are authorized to purchase the Special Clothing at two locations near the field operations from a vendor listed on the GSA Supply Schedule that provides clothing designed for persons who spend significant periods outdoors in extreme weather environments. The selected clothing is designed to provide UV protection, shed moisture and provide maximum protection from heat stress and thus fits the definition of Special Clothing from EPA Order 4800.1 A1.

Approved:



A. Stanley Meiburg
Acting Regional Administrator
EPA Region 4

7/16/2010
Date

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ETSB FACILITIES

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Concurrence:



Walter DiPietro
EPA Region 4 Safety Officer

July 15, 2010
Date

Attachments:

Mobile Sector Incident Report, June 22, 2010

Deepwater Horizon Onshore Task Force Heat Stress Management Plan

Deepwater Horizon Heat Stress Safety Alert

Health and Safety Plan, Deepwater Horizon Oil Spill Response, Mobile, Alabama (Excerpted)

OSHA Advisory on Keeping Workers Safe During the Oil Spill Response and Cleanup Operations

OSHA Advisory on Heat Stress

OSHA Fact Sheet: Protecting Workers from Effects of Heat

OSHA Quick Card: Protect Yourself From Heat Stress

EPA Order 4800.1 A1, EPA Policy for Providing Wearing Apparel for Employees

EPA Order 1400.1, Safety, Health and Environmental Program
(See: http://intranet.epa.gov/ohr/rmpolicy/ads/orders/1440_1.pdf)

Use of Appropriated Funds for Wearing Apparel, Office of General Counsel Opinion, November 7, 2000